

CLOSED SESSION  
Monday, May 7, 2001

At its meeting of Monday, May 7, 2001, at 10:25 a.m., upon a motion by Commissioner Ikerd, and unanimously carried, the Board recessed into Closed Session, in accordance with NCGS 143-318.11 (a) (3) To consult with an attorney employed or retained by the public body in order to preserve the attorney-client privilege between the attorney and the public body.

Present were Chair Marie H. Huffman, Vice-Chair W. Steve Ikerd, and Commissioners Katherine W. Barnes, Barbara G. Beatty, and Dan A. Hunsucker.

Also present were County Manager/Deputy Clerk J. Thomas Lundy, Assistant County Manager Steven D. Wyatt, County Attorney Robert O. Eades, Staff Attorney Debra Ness Bechtel, and County Clerk Thelda B. Rhoney.

County Attorney Eades gave a brief update on the Agreement between Catawba County and City of Newton regarding water service to Southeastern Catawba County. County Attorney Eades noted the Commissioners had instructed him to negotiate with Larry Pitts, Newton City Attorney, regarding the dispute between Catawba County and the City of Newton as to water service for Southeastern Catawba County. He informed the board he had been doing so and wanted to report to them upon the progress and content of those negotiations. He distributed to the Commissioners, a draft letter to Mr. Pitts outlining the terms of a proposed agreement. The Board reviewed and critiqued each of the following 16 items in the letter. The Board gave County Attorney Eades further instruction as to its position and instructed him as to the position he should adopt in future negotiations. The Board requested County Attorney Eades also provide copies for Attorney Pitts to distribute to each Newton board member for their review before their 4:00 p.m. meeting this afternoon.

The proposed Agreement will provide:

1. Newton Service Area: NC Highway 16 south to Buffalo Shoals Road; north on Buffalo Shoals Road to the intersection of W Bandys Cross Road; west on W Bandys Cross Road to the creek; then cross country directly to the intersection of Balls Creek Road and NC Highway 10; then west on NC Highway 10 to Mt. Olive Church Road. The Newton Service Area is shown on the attached map.
2. Catawba County will pay for and install a valve and meter at the intersection of W Bandys Cross Road and Buffalo Shoals Road.
3. At the new meter point, Newton will sell to Catawba County bulk water at the rate of 90 cents per 1,000 gallons of water. This rate will remain effective for two years. At the end of this period, Newton will have the right to increase the rate no more than the lowest percentage increase to any other Newton bulk water customer who purchases water through a master meter.
4. At the rate specified above, Newton will furnish a quantity of water, up to one million gallons per day, sufficient to meet the needs of retail customers, both residential and non-residential, in the southeastern section of Catawba County outside the Newton Service Area defined above. This area, the Catawba County Service Area, is shown on the attached map. If during the term of the Agreement, more than one million gallons per day is needed, Newton will provide said amount pursuant to the terms of the Agreement or, at its option, may require Catawba County to pay a different rate per 1,000 gallons used over one million gallons a day. The Agreement will specify the method of establishing such rate and will provide for a cap to any increases. This method is to be established by Newton. Water purchased pursuant to the Agreement will not be subject to Revenue Sharing.
5. Within the Newton Service Area, Catawba County will not with another entity enter into an Agreement to finance a waterline extension pursuant to Chapter 504 of the Catawba County Ordinance (Water & Sewer) without first obtaining the permission of Newton. Catawba County will have no obligation, nor authority, to keep other water suppliers out of the Newton Service Area.
6. Newton will pay to Catawba County \$276,000. This amount is paid to assist Catawba County in installing infrastructure required to provide water service to the Catawba County Service Area through a water supplier other than the City of Newton and, if necessary, to relocate the pumps now located at the Newton Landfill.

Upon execution of the Agreement, this amount will be paid in a single lump sum of \$226,000. In addition, Newton will grant the County a credit of \$50,000 toward water purchased pursuant to the Agreement.

7. Newton will remove the existing 6 inch meters at Island Point Road and Mollys Backbone Road and put the lines in working order within six months of the implementation of the Agreement or will, at that time, notify the County it abandons those meters and will leave those meters in place, not read and not billed by Newton, and owned by Catawba County.
8. Within the Catawba County Service Area, the City of Hickory will remove all existing Newton water customer meters. Newton can then have those meters.
9. Catawba County will give notice of termination of its purchase and sale of bulk water pursuant to the Agreement not less than 120 days prior to the end of the Newton fiscal year in which such notice is given.
10. The 1996 Agreement between the City of Newton and Catawba County will be amended to extend its provisions to the Newton Service Area. In addition, an amendment will provide that applications for new waterlines within the Newton Service Area may be received by either the City or the County and that such lines may be financed and constructed by either the City or the County. All such lines will be designed and built as required by Newton's then-existing utility standards. If the County chooses to finance a waterline extension, the City can choose either the Revolving Loan or Revenue Sharing provisions of Chapter 504 of the Catawba County Ordinance (Water & Sewer). If the County proposes to install an extension at its own expense, it must first obtain permission from the City of Newton; however, only where Newton has insufficient capacity to serve the customers to be served by such an extension may it deny the County permission to extend any such line. Newton will provide operations and maintenance services for any such lines within the Newton Service Area. In all other respects, the terms of the 1996 Agreement will remain in full force and effect, specifically including Newton's obligation to provide operations and maintenance services within the Newton Service Area, an equal division between the City and County of utility revenue generated within the Newton Service Area, and rates charged customers within the Newton Service Area which do not exceed 200% of the rates charged to customers located within the corporate limits of Newton. Where Newton installs a line at its own expense, without participation by the County, Revenue Sharing shall not apply.
11. The 1998 Addendum to the 1996 Agreement between Newton and Catawba County will become void upon execution of the proposed Agreement.
12. Catawba County will, upon execution of the Agreement, begin immediately working to serve the Catawba County Service Area with water furnished by the City of Hickory.
13. Upon connection of a line or lines allowing Hickory water to flow into lines serving the Catawba County Service Area, the valve and meter installed at the intersection of W Bandys Cross Road and Buffalo Shoals Road will be turned off, and the meter no longer read, but the two systems will remain connected.
14. Upon execution of the Agreement, Newton will immediately certify to the State Division of Water Quality, and to any other necessary State Agency, that all issues regarding this matter have been resolved and that it no longer opposes transfer of waterlines on Buffalo Shoals, Shiloh, and Sherrills Ford Roads to the Hickory/Catawba County System Identification Number. Newton will fully and actively cooperate as directed by the State, to the State's satisfaction, and will take any and all action required by the State, to complete this transfer. The specific lines, or portion of any line, to be transferred are shown on the attached map.
15. Upon transfer of the pertinent waterlines to the Hickory/Catawba County System Identification Number, Catawba County will resume Tax Collection Services for the City of Newton upon the same basis as contracted with other Catawba County Municipalities.
16. Certain telemetry equipment owned by the City of Newton shall remain in place at the Water Tank located at Bandys High School until such time as Catawba County determines it must either be removed at Newton's expense or be abandoned by Newton and left affixed to the tank. If Catawba County determines such equipment must be removed, it will so notify Newton not less than sixty days prior to the time such equipment must be removed.

At 11:32 a.m. Commissioner Barnes made a motion for the Board to return to Open Session and recessed its meeting until Tuesday, May 8, 2001, 8:30 a.m. at the Catawba County Government Center, Second Floor Conference Room. The motion carried unanimously.

CLOSED SESSION  
Tuesday, May 8, 2001

At its reconvened meeting on Tuesday, May 8, 2001, at 8:30 a.m., upon a motion by Commissioner Ikerd, and unanimously carried, the Board recessed into Closed Session, in accordance with NCGS 143-318.11 (a) (3) To consult with an attorney employed or retained by the public body in order to preserve the attorney-client privilege between the attorney and the public body.

Present were Chair Marie H. Huffman, Vice-Chair W. Steve Ikerd, and Commissioners Katherine W. Barnes, Barbara G. Beatty, and Dan A. Hunsucker.

Also present were County Manager/Deputy Clerk J. Thomas Lundy, Assistant County Manager Steven D. Wyatt, County Attorney Robert O. Eades, and County Clerk Thelda B. Rhoney.

County Attorney Eades noted the Commissioners had instructed him to negotiate with Larry Pitts, Newton City Attorney, regarding the dispute between Catawba County and the City of Newton as to water service for Southeastern Catawba County. He informed the Board he had been doing so and wanted to report to them upon the progress and content of those negotiations. He reviewed the draft letter outlining the agreement but noted that Newton was now asking for a 200 foot of service area across Highways 10 and 16, Buffalo Shoals and W Bandys Cross Roads.

The Commissioners felt the sixteen point agreement Attorney Eades sent to Newton yesterday was fair and reflects the spirit of discussion the past several weeks and they remain committed to going forward with the proposal as outlined in County Attorney Robert Eades letter of May 7, 2001 to City of Newton Attorney Larry Pitts. The 200 foot boundary would affect other municipalities, and the Commissioners felt the City of Newton should work out boundary agreements with other municipalities.

The Commissioners directed Attorney Eades to prepared the following statement for County Attorney Eades to read in open session: We have been working with Newton trying to resolve this dispute. We believe we have made much progress and we appreciate the work of the citizens committee. Catawba County yesterday delivered a sixteen point agreement to Newton which is fair and reflects the spirit of our discussion the past several weeks. We remain committed to going forward with this proposal, as outlined in the County Attorney's letter and map of May 7, 2001. The territory Newton requested, and we have agreed to, is bounded by the centerlines of Highways 10 and 16, Buffalo Shoals Road, W Bandys Cross Road to the creek; then cross country to the intersection of Balls Creek Road and Highway 10. Newton, however, has asked Catawba County to "give" them 200 feet of service area across Highways 10 and 16, Buffalo Shoals and W Bandys Cross Roads. This would have the effect of prohibiting Catawba County from cooperating with other municipalities who may wish to serve county citizens by extending lines along or up to these roads. We think this attempt by Newton to exclude other municipalities is unfair. However, any boundary agreement(s) Newton negotiates with other municipalities will be honored by Catawba County. As outlined in our agreement, Catawba County stands ready to reinstate tax collection service immediately upon transfer by the State of the lines on Buffalo Shoals, Shiloh and Sherrills Ford Roads to the County's water system identification number. We have made a good faith offer which reflects the weeks of negotiation and which also reflects the substantial agreement which has been reached between Newton and Catawba County. We ask the Newton Board of Aldermen to accept this agreement on behalf of all our citizens.

Attorney Eades said he had a letter from the State regarding mediation and the next best offer would be to mediate.

Attorney Eades then addressed the status of the contract in place with the Cities of Conover and Hickory. He reminded the Board of Commissioners that Catawba County had notified Newton of a competing offer from Hickory and explained the legal significance of the notification. He explained his concern that Newton might give notice it intended to meet the offer from Hickory.

By consensus the Commissioners directed County Attorney Robert Eades and County Manager Tom Lundy work with the City of Hickory to withdraw their offer with the County to provide water service to southeastern Catawba County.

At 9:25 a.m. Commissioner Beatty made a motion for the Board to return to open session and requested County Attorney Robert Eades read the aforementioned statement in open session officially committing to go forward with an agreement which reflects the language in a letter from County Attorney Eades to City of Newton Attorney Larry Pitts dated May 7, 2001. The motion carried unanimously.

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Marie H. Huffman, Chair

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Thelda B. Rhoney, County Clerk